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No. 97-5737

In the Supreme Court of the United States

OCTOBER TERM, 1997

SANDRA K. FORNEY, PETITIONER

v.

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN SUPPORT OF REVERSAL

SETH P. WAXMAN
Solicitor General
FRANK W. HUNGER
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
LISA SCHIAVO BLATT
Assistant to the Solicitor General
WILLIAM KANTER
MARY K. DOYLE
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether an order of remand by a district court under the fourth sentence of 42 U.S.C. 405(g) is subject to appeal by a Social Security claimant who is aggrieved by that order in that she sought outright reversal of the underlying administrative decision without remanding for further rehearing.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-13) is reported at 108 F.3d 228. The opinion and order of the district court (Pet. App. 15-25) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1997. A petition for rehearing was denied on May 29, 1997. Pet. App. 41. The petition for a writ of certiorari was filed on August 25, 1997, and was granted on January 16, 1998. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 205(g) of the Social Security Act, as codified at 42 U.S.C. 405(g), and 28 U.S.C. 1291 are set forth in an Appendix to this brief. App., *infra*, 1a-3a.

STATEMENT

1. Title II of the Social Security Act, 42 U.S.C. 423(a)(1)(D), provides for the payment of insurance benefits to persons who have contributed to the program and who are "under a disability."[1] The Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d)(1)(A); 42 U.S.C. 416(i)(1)(A).

The Commissioner of Social Security[2] has established a five-step sequential evaluation process for determining whether an adult person is disabled. See 20 C.F.R. 404.1520-404.1576. "The first two steps involve threshold determinations that the claimant is not presently working and has an impairment which is of the required duration and which significantly limits his ability to work. [20 C.F.R. 404.1520(b) and

[1] Title XVI of the Act provides for the payment of disability benefits to certain indigent persons under the Supplemental Security Income program. 42 U.S.C. 1382(a).

[2] The Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 106(d), 108 Stat. 1476, transferred the administration of the social security program from the Secretary of Health and Human Services (HHS) to the Commissioner of Social Security. During the course of this litigation, the Commissioner of Social Security was substituted as the defendant for the Secretary of HHS.

(c).] In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. [20 C.F.R. Pt. 404, Subpt. P, App. 1 (pt. A).] If the claimant's impairment matches or is 'equal' to one of the listed impairments, he qualifies for benefits without further inquiry. [20 C.F.R. 404.1520(d).] If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his own past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do his past work or other work, he qualifies for benefits. [20 C.F.R. 404.1520(e) and (f).]" *Sullivan* v. *Zebley*, 493 U.S. 521, 525-526 (1990); see also *Bowen* v. *Yuckert*, 482 U.S. 137, 140-142 (1987); *Heckler* v. *Campbell*, 461 U.S. 458, 459-461 (1983).

The initial disability determination is made by a state agency acting under the authority of the Commissioner. 42 U.S.C. 421(a). If the state agency denies the disability claim, the claimant is entitled to a hearing before an administrative law judge (ALJ) and may request review by the Social Security Administration's (SSA) Appeals Council. 42 U.SC. 405(b); 20 C.F.R. 404.929-404.982. After a claimant exhausts those administrative procedures, he may seek judicial review in federal court. 42 U.S.C. 405(g). See *Bowen* v. *Yuckert*, 482 U.S. at 142.

2. In 1991, petitioner applied for disability benefits under 42 U.S.C. 423(d) alleging disability due to fibromyalgia and depression. Pet. App. 17, 26.[3] After

[3] Fibromyalgia is a condition characterized by musculoskeletal pain. Because of the general presence of normal

extensive proceedings, an ALJ denied petitioner's claim on the ground that, although she was incapable of returning to her former line of work as a cook and kitchen manager, she was able "to perform a wide range of sedentary [jobs] existing in significant numbers in the national economy." *Id.* at 35. In making that determination, the ALJ rejected the medical opinion of petitioner's treating physician (which had supported her disability claim); found that petitioner's own testimony lacked credibility in critical respects; drew conclusions from a vocational expert's answers to hypothetical questions concerning petitioner's impairments; and accepted that expert's testimony as to the kinds of work that petitioner was able to perform. *Id.* at 26-38; see also *id.* at 21-25. After SSA's Appeals Council denied petitioner's request for review, *id.* at 39, the ALJ's denial of benefits became the final decision of the Commissioner. 20 C.F.R. 404.981.

3. Petitioner sought judicial review in federal district court under 42 U.S.C. 405(g), requesting, as relief, "[t]hat th[e] court reverse and set aside the decision of [the Commissioner of Social Security] denying [petitioner's] claim for disability benefits." C.A. E.R. 242. Petitioner also requested, "[i]n the alternative, that th[e] court remand the case back

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physical findings and laboratory results in patients with fibromyalgia, its diagnosis in large measure depends on an evaluation of the symptoms as reported by the patient. See generally Bruce C. Gilliland, *Relapsing Polychondritis and Other Arthritides*, 2 Harrison's Principles of Internal Medicine 1955-1957 (14th ed. 1998); Don Goldberg, M.D., *Fibromyalgia Syndrome*, 257 Journal of American Medical Ass'n 2782-2786 (1987); Robert Bennett, M.D., *Fibrosititis: Does it exist and can it be treated?*, The Journal of Musculoskeletal Medicine 57-72 (June 1984) (*reprinted at* C.A. E.R. 82-91).

to the [Commissioner] for proper evaluation of the evidence or a hearing *de novo*." *Ibid.* She contended, *inter alia*, that the ALJ should not have rejected either her treating physician's opinion or her own testimony concerning her disability, and that the ALJ's hypothetical questions to the vocational expert were improper. The district court rejected each of those arguments. Pet. App. 22-24.

The district court nonetheless determined, as petitioner had argued, that the record did not support the ALJ's finding that petitioner was capable of performing certain identified jobs existing in the national economy. Those jobs, the court observed, required "frequent or constant reaching," and the ALJ had not rejected another physician's "assessment that [petitioner's] ability to reach is impaired." Pet. App. 24. Thus, because "the [Commissioner] has not sustained [his] burden of showing that claimant can engage in substantial gainful work in the economy," the court remanded the case to SSA for further proceedings "in accordance with" the court's opinion. *Id.* at 25. That order was issued pursuant to the fourth sentence of 42 U.S.C. 405(g), which authorizes a district court to enter "a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." On May 24, 1995, the court entered its judgment "remand[ing] to the [Commissioner] for further proceedings." Pet. App. 14.

4. Petitioner appealed the district court's order, contending that she should prevail on the issues the district court had resolved against her and that, on that basis, the agency's decision should be reversed outright and the case should be remanded solely for

payment of benefits, not for additional administrative proceedings on the merits. See Pet. C.A. Br. 18 ("the agency's decision should be reversed and [petitioner] should be found disabled"); see also *id.* at 21, 27-28, 35; Pet. 2, 10.

The court of appeals dismissed the appeal on procedural grounds. Pet. App. 1-13.[4] The court acknowledged that, under *Sullivan* v. *Finkelstein*, 496 U.S. 617 (1990), an order under sentence four that sets aside the Commissioner's decision denying benefits and remands to the Commissioner for further proceedings on the merits of the claim is "'final,' in a formalistic sense, for all parties to it." Pet. App. 10. Moreover, under sentence eight of 42 U.S.C. 405(g), that order "shall be subject to review in the same manner as a judgment in other civil actions." See *Finkelstein*, 496 U.S. at 625.

The court nonetheless held that the finality of the district court's judgment in this case "does not necessarily entitle [petitioner] to appeal the district court's decision," because "[a] prevailing party normally may not appeal the decision in its favor." Pet. App. 10. "There can be little doubt," the court continued, "that a claimant 'prevails' * * * when he or she succeeds in securing a sentence-four remand that may result in an award of all of the benefits

[4] In its brief, the government had asked the court of appeals to address petitioner's claims on the merits. See Gov't C.A. Br. 1 (asserting that the district court's remand order is a "final" and "appealable" order, "over which this court has jurisdiction pursuant to 28 U.S.C. § 1291"). We have been informed, however, that at oral argument, after the court had given notice of its intent to address the issue, counsel for the government contended that petitioner's appeal should be dismissed for lack of jurisdiction.

claimed." *Ibid.* The court reasoned that, on remand, petitioner might secure all the relief she seeks and, "[i]f she does, our decision on the merits of this appeal will have been wholly unnecessary. Review at this point would be subject to all of the disadvantages of piecemeal appeals; unnecessary decisions waste judicial effort, interfere unduly with the district courts or administrative agencies, and require us to adjudicate on less than a full record." *Id.* at 11.[5]

Finally, the court of appeals rejected petitioner's argument that, if she were awarded no benefits on remand and brought an entirely new civil action to challenge that adverse decision, principles of preclusion would bar her from challenging the district court's adverse rulings in the present action. Pet. App. 12. The court explained that, even though the district court might well adhere to its earlier rulings in the subsequent action, the critical question is whether petitioner could challenge those rulings on appeal. The court concluded that she would be entitled to do so, both because it would be "inappropriate to hold [her] to rulings that she was precluded from appealing," and because, in its view, the issues as to which she would seek appellate review in the subsequent action would not have been "essential to the judgment in the prior case." *Ibid.*

[5] The court of appeals acknowledged that "there may be instances when a claimant is foreclosed by the district court's remand decision from part of the benefits sought, and would then seek an appeal from the remand decision on the ground that broader relief should have been awarded. See *Finkeltein*, 496 U.S. at 623 n. 3." Pet. App. 10 n.5. The court expressed no view as to the claimant's right to appeal in that context. *Ibid.*

SUMMARY OF ARGUMENT

A. Under the express terms of the fourth and eighth sentences of 42 U.S.C. 405(g), as well as under *Sullivan* v. *Finkelstein*, 496 U.S. 617 (1990), and *Shalala* v. *Schaefer*, 509 U.S. 292 (1993), the district court's order and judgment in this case, which remanded the Commissioner's decision denying benefits to the agency for rehearing, was an appealable final judgment under 28 U.S.C. 1291. That conclusion does not depend on whether it is the Commissioner or the claimant who seeks review in the court of appeals. In either case, a district court's order that is entered pursuant to the fourth sentence of 42 U.S.C. 405(g) ends the litigation before the court and results in the entry of a final, appealable judgment.

B. The court of appeals erred in holding that, although the district court's judgment in this case is final under 28 U.S.C. 1291, petitioner may not appeal the district court's judgment because she successfully obtained an order reversing the Commissioner's decision and remanding for further administrative proceedings. A party has standing to seek judicial review in the court of appeals if the party retains a stake in the outcome of the appeal sufficient to satisfy the requirements of Article III. *Deposit Guaranty Nat'l Bank* v. *Roper*, 445 U.S. 326, 334 (1980). Similarly, the appellant must be "aggrieved" by the final decision of the district court. *Id.* at 333. That rule ensures that a party does not exercise a statutory right of appeal when the decision being appealed has afforded all of the relief sought by the party. *Id.* at 333-334.

Consistent with those principles, petitioner may appeal the district court's sentence-four judgment.

Petitioner has been aggrieved by that judgment insofar as it orders a remand for further rehearing by the agency. In petitioner's view, the district court should have entered, under the fourth sentence of Section 405(g), a judgment "reversing the decision of the Commissioner * * * *without* remanding the cause for a rehearing." 42 U.S.C. 405(g) (emphasis added). Because petitioner seeks an immediate award of benefits without further rehearing by the agency on her application for benefits, petitioner has not prevailed fully upon her asserted claim for relief before the district court.

Petitioner also is aggrieved by the adverse portions of the district court's decision, which rejected her contentions of administrative error concerning the medical opinion of her treating physician, her credibility, and the testimony of the vocational expert who testified adversely to petitioner. A victory in the court of appeals on one or more of the district court's rulings could significantly affect the administrative proceedings on remand concerning petitioner's entitlement to benefits.

C. The policy concerns expressed by the court below do not furnish a basis for carving out an exception to the general rule under 28 U.S.C. 1291 that a party who is aggrieved by the final judgment of a district court has a right of appeal. The courts of appeals will not be unduly burdened with appeals by claimants of sentence-four remand orders. Because of a variety of practical and legal considerations, the vast majority of claimants who obtain sentence-four remand orders are likely to forgo an immediate appeal and pursue administrative proceedings. Given the existing considerations motivating claimants to return initially to the agency for a rehearing on their

applications for benefits, equitable principles of issue preclusion should not be applied rigidly to create incentives for claimants to resort in the first instance to the courts of appeals.

ARGUMENT

THE COURT OF APPEALS HAS JURISDICTION OVER PETITIONER'S CHALLENGE TO THE DISTRICT COURT'S ORDER OF REMAND UNDER THE FOURTH SENTENCE OF 42 U.S.C. 405(g)

A. The District Court's Sentence-Four Judgment Is A Final Decision That Is Appealable Under 28 U.S.C. 1291

The fourth sentence of 42 U.S.C. 405(g) provides that the district court "shall have [the] power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for rehearing." There is no dispute that the district court's order in this case remanding the Commissioner's denial of benefits to the Commissioner for rehearing was entered pursuant to the fourth sentence of 42 U.S.C. 405(g). Pet. App. 4-5, 8 n.1.[6] The eighth sentence of

[6] A sentence-four remand is "entirely different" from a remand under the sixth sentence of Section 405(g). *Sullivan* v. *Finkelstein*, 496 U.S. 617, 626 (1990). Sentence six provides, *inter alia*, that the district court may remand the case to the agency either when (for good cause) the Commissioner requests the remand before filing an answer or when the district court is presented with material new evidence that was not available to the claimant at the time of the prior administrative proceeding. A district court that has granted a sentence-six remand retains jurisdiction of the case while the administrative proceedings are pending. Sentences four and six of 42 U.S.C. 405(g) provide the exclusive means by which a district court reviewing a final agency decision denying Social Security benefits may remand the case to the agency for further proceedings. See generally *Melkonyan* v. *Sullivan*, 501 U.S. 89, 97-98 (1991). We have been informed by SSA that the vast majority of remands ordered under Section 405(g) are entered pursuant to sentence four.

Section 405(g) in turn provides that such a judgment "shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions." The express terms of those provisions confirm that the district court's order of remand in this case was a final decision appealable under 28 U.S.C. 1291.

1. In *Sullivan* v. *Finkelstein*, 496 U.S. 617 (1990), this Court held that the Secretary of Health and Human Services could appeal immediately an order entered under sentence four of Section 405(g) that set aside the Secretary's denial of benefits (in the process essentially holding invalid the regulations on which the Secretary had relied in denying benefits) and remanded the cause to the Secretary for further proceedings on the merits of the claim without regard to the challenged regulations. *Id.* at 624. This Court explained that a contrary ruling would produce an anomalous result: "should the Secretary on remand undertake the inquiry mandated by the District Court and award benefits, there would be grave doubt * * * whether he could appeal his own order." *Id.* at 625. The Court also noted that it "express[ed] no opinion about appealability" where "the person seeking judicial review * * * seek[s] to appeal on the

ground that broader relief should have been granted by the district court." *Id.* at 623 n.3.[7]

Nonetheless, the Court did not limit its reasoning in *Finkelstein* concerning the finality of sentence-four remand orders to circumstances in which judicial review might otherwise be foreclosed. To the contrary, the Court focused on the express language of Section 405(g) and found that it categorically provides that the district court's action under sentence four is a final judgment and appealable as such under 28 U.S.C. 1291. 496 U.S. at 625.

The Court explained that the use of the term "a civil action" in the first sentence of Section 405(g) "suggests that at least in the context of § 405(g), each final decision of the Secretary will be reviewable by a separate piece of litigation." 496 U.S. at 625. The Court also relied on the fact that a sentence-four remand results in a "judgment," and, under sentence eight of Section 405(g), that judgment "shall be final." *Ibid.* Accordingly, the Court concluded that "the fourth sentence directs the entry of a *final, appealable* judgment even though that judgment may be accompanied by a remand order." *Id.* at 629 (emphases added); see also *id.* at 628 ("'[F]inal judgments' are at the core of matters appealable under § 1291, and

[7] In reserving the question of whether a claimant could appeal a district court's remand order, the Court cited *Bohms* v. *Gardner*, 381 F.2d 283 (8th Cir. 1967), cert. denied, 390 U.S. 964 (1968). In *Bohms*, a claimant had sought appellate review of a district court's decision remanding the case for further proceedings under the sixth sentence of 42 U.S.C. 405(g). 381 F.2d at 284 n. 1, 286. See note-6, *supra*. In an opinion by then-Circuit Judge Blackmun, the court dismissed the claimant's appeal for lack of a final judgment under 28 U.S.C. 1291. *Bohms*, 381 F.2d at 285-286.

respondent does not contest the power of Congress to define a class of orders as 'final judgments' that by inference would be appealable under § 1291. This is what Congress has done in the fourth sentence of § 405(g).") (citation omitted).[8]

In *Shalala* v. *Schaefer*, 509 U.S. 292 (1993), the Court reiterated *Finkelstein*'s conclusion that "'each final decision of the Secretary [is] reviewable by a *separate* piece of litigation,' and a sentence-four remand order '*terminate[s]* the civil action' seeking judicial review of the Secretary's final decision." *Id.* at 299 (quoting *Finkelstein*, 496 U.S. at 624-625). The Court in *Schaefer* held that the 30-day period for filing an application for attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d)(1)(B), which must be filed "within thirty days of final judgment in the action," begins immediately upon expiration of the time for an appeal of a

[8] In addition to relying on the language of 42 U.S.C. 405(g), we argued in *Finkelstein* that the finality of a district court's order of remand for further administrative proceedings is analogous to this Court's implicit recognition of jurisdiction to review remand orders from the courts of appeals to administrative agencies under the Hobbs Act, 28 U.S.C. 2341 *et seq.*, which authorizes this Court to review "final judgment[s]" of the courts of appeals, 28 U.S.C 2350. See, *e.g.*, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 535-536 (1978); *ICC* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987). We similarly argued that our position is consistent with general principles of judicial review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, under which an appellate court may review a decision that finally rejects a particular agency decision and remands all matters before the court to an official in another Branch of government who is responsible for administering the government program. See *Finkelstein*, 89-504 U.S. Br. at 29-30, 34-35; 89-504 U.S. Reply Br. at 12-14.

sentence-four remand order and not upon the completion of the administrative proceedings on remand. 509 U.S. at 298. In so holding, the Court rejected the notion that the fourth sentence of Section 405(g) permits a court to "postpone" entry of a final judgment and "retain jurisdiction pending completion of the administrative proceedings." *Id.* at 297.[9]

2. Under the express terms of sentences four and eight of Section 405(g), as well as under this Court's decisions in *Finkelstein* and *Schaefer*, the finality of a district court's judgment entered pursuant to sentence four does not depend on whether the appeal is filed by the Commissioner or the claimant. Although *Finkelstein* discussed the practicalities involved when the government is aggrieved by a sentence-four remand order, see 496 U.S. at 625, the Court did not state that the government may appeal only where a practical need exists. Moreover, the Court in *Finkelstein* did not rely on the alternative "collateral order" theory that was also advanced by the government, see *id.* at 632 (Blackmun, J., concurring in the judgment), which would more evidently

[9] Lower courts have concluded that a remand for further administrative proceedings results in a final judgment in settings other than Section 405(g). See *Travelstead* v. *Derwinski*, 978 F.2d 1244, 1248 (Fed. Cir. 1992) (decision by Court of Veterans Appeals remanding to Board of Veterans' Appeals under 38 U.S.C. 7261 is a final, appealable order); *Monongahela Valley Hospital, Inc.* v. *Sullivan*, 945 F.2d 576, 586 (3d Cir. 1991) (district court decision remanding to Secretary of HHS under Medicare Act, 42 U.S.C. 1395oo(f)(1), is a final, appealable order); see also *Rueda-Menicucci* v. *INS*, 132 F.3d 493, 495 (9th Cir. 1997) (permitting party to seek fees under EAJA after obtaining a final order of remand to Board of Immigration Appeals). See also note 8, *supra*.

have afforded a right of appeal only to the Commissioner. Instead, the court concluded in *Finkelstein* that a remand under the fourth sentence of Section 405(g) terminates the litigation and results in the entry of a final, appealable judgment. *Id.* at 624-629; see also *Schaefer*, 509 U.S. 297-298.

In the present case, the district court held that although the Commissioner had substantial evidence for some of his findings, Pet. App. 22-24, he had not sustained his burden of demonstrating that petitioner could perform a type of employment existing in the national economy, *id.* at 24-25. The court then "remanded to the [Commissioner] for further proceedings" consistent with the court's opinion, *id.* at 25, and entered a "judgment" to that effect, *id.* at 14. That judgment "terminated the civil action challenging the [Commissioner's] final determination that [the claimant] was not entitled to benefits, set aside that determination, and finally decided" the contentions raised by petitioner. *Finkelstein*, 496 U.S. at 625. Further, if the Commissioner's decision on remand again denies the claimant's application for benefits, that decision will be subject to judicial review in a "separate piece of litigation" instituted by the claimant pursuant to Section 405(g). *Id.* at 625. Thus, as the court of appeals itself recognized, "to conclude that a sentence-four remand is not final for the claimant is analytically untidy; it is flatly inconsistent with the Supreme Court's insistence in *Finkelstein* that a sentence-four remand terminates the civil action." Pet. App. 9-10.

Moreover, it is clear that, under *Finkelstein*, the Commissioner could have sought appellate review of the district court's order in this case on the ground that the district court erroneously held that the Com-

missioner lacked substantial evidence to conclude that petitioner could perform other jobs that exist in the national economy. See *Kendrick* v. *Shalala*, 998 F.2d 455, 458 (7th Cir. 1993). If a sentence-four remand is a "final, appealable judgment" (*Finkelstein*, 496 U.S. at 629) as to only the Commissioner, however, petitioner could not have filed a cross-appeal to assert legal errors in the district court's final decision or otherwise to alter the court's judgment in the claimant's favor. Cf. *Swint* v. *Chambers County Comm'n*, 514 U.S. 35, 50-51 (1995) (leaving open question "whether or when it may be proper for court of appeals with jurisdiction over one ruling to review, conjunctively, related rulings that are not themselves independently appealable"). Nothing in the language of Section 405(g) supports that anomalous and inequitable result. Indeed, the language of the fourth and eighth sentences of Section 405(g) compels the contrary conclusion that "[t]he civil action ending in a sentence-four remand * * * must be 'final,' in a formalistic sense, for all parties to it." Pet. App. 10.

B. Petitioner May Appeal Because She Is Aggrieved By The District Court's Judgment

Although the court of appeals recognized the finality of the district court's judgment, it nonetheless dismissed petitioner's appeal on the grounds that "[a] prevailing party normally may not appeal the decision in its favor" and that "[t]here can be little doubt that a claimant 'prevails' * * * when he or she succeeds in securing a sentence-four remand that may result in an award of all of the benefits claimed." Pet. App. 10. In our view, that principle is framed too broadly, and the court of appeals erred in applying it to dismiss the appeal in this case.

1. Under the eighth sentence of 42 U.S.C. 405(g), a sentence-four final judgment is subject to judicial review "in the same manner as a judgment in other civil actions." Thus, proceedings under that provision are subject to general principles of appellate review, including the requirement that a party have standing to appeal. See generally 20 *Moore's Federal Practice* § 303.10 (3d ed. 1997); 15A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3902 (2d ed. 1992).[10]

This Court has observed that, "[o]rdinarily, only a party aggrieved by a judgment or order of a district

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[10] There can be no doubt that petitioner possessed Article III standing to bring this action in federal district court in the first instance, because the final decision of the Commissioner denied the benefits to which she claimed she was entitled. This Court has held that a person who has intervened in a case brought by someone else must independently satisfy Article III standing requirements in order to appeal a judgment. *Arizonans for Official English* v. *Arizona*, 117 S. Ct. 1055, 1067 (1997) ("The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance."); *Diamond* v. *Charles*, 476 U.S. 54, 62-69 (1986); *Bryant* v. *Yellen*, 447 U.S. 352, 368 (1980). Here, however, petitioner is the original plaintiff, and she had standing to invoke the jurisdiction of the district court in the first instance. In any event, there can be no doubt that petitioner satisfies whatever further Article III standing requirement there may be for an appeal by a plaintiff, because the district court's final judgment, like the Commissioner's final decision, did not order an immediate award of the benefits she claims. In these circumstances, petitioner clearly has "a continuing stake in the outcome of the appeal." *Deposit Guaranty Nat'l Bank* v. *Roper*, 445 U.S. 326, 336 (1980); see also *Arizonans For Official English*, 117 S. Ct. at 1067 ("litigant [must] possess 'a direct stake in the outcome' ") (quoting *Diamond* v. *Charles*, 476 U.S. at 62).

court may exercise the statutory right to appeal therefrom. A party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it." *Deposit Guaranty Nat'l Bank* v. *Roper*, 445 U.S. 326, 333 (1980); see also *INS* v. *Chadha*, 462 U.S. 919, 930 (1983); *Perez* v. *Ledesma*, 401 U.S. 82, 87 n.3 (1971); *Gunn* v. *University Comm. to End the War in Vietnam*, 399 U.S. 383, 390 n.5 (1970); *Electrical Fittings Corp.* v. *Thomas & Betts Co.*, 307 U.S. 241, 242 (1939). The rule that a fully prevailing party may not appeal its victory is "derived from the statutes granting appellate jurisdiction and the historic practices of the appellate courts; it does not have its source in the jurisdictional limitations of Art[icle] III." *Roper*, 445 U.S. at 333-334. That rule also is consistent with the general principle that appellate proceedings are confined to "reviews [of] judgments, not statements in opinions." *California* v. *Rooney*, 483 U.S. 307, 311 (1987) (per curiam) (internal quotation marks omitted) (dismissing writ of certiorari as improvidently granted because state court judgment "was entirely in the State's favor").

In *Deposit Guaranty National Bank* v. *Roper*, this Court found that credit card holders could appeal a district court's denial of class certification under Federal Rule of Civil Procedure 23, even though the defendant had tendered to the named plaintiffs the maximum amount each could have recovered and the district court had entered judgment in the plaintiffs' favor. 445 U.S. at 332-336. The plaintiffs had sought appellate review of the denial of class certification in order to shift part of the litigation costs to other class members. *Id.* at 334 n.6, 336. The Court found that the plaintiffs' interest in the appeal was

sufficient to confer Article III standing to appeal, *id.* at 336, and that the denial of class certification was a "procedural ruling, collateral to the merits of a litigation, that is appealable after the entry of final judgment," *ibid.* The Court therefore held that "[t]he denial of class certification stands as an adjudication of one of the issues litigated," and the plaintiffs, "who assert a continuing stake in the outcome of the appeal, were entitled to have this portion of the District Court's judgment reviewed." *Ibid.*

More recently, in *United States* v. *Jose*, 117 S. Ct. 463 (1996), this Court held in a per curiam opinion that the Ninth Circuit had jurisdiction to entertain an appeal by the Internal Revenue Service (IRS) of a district court's final order that enforced two IRS summonses but placed restrictions on the circulation within the agency of the summoned documents. The Ninth Circuit had held that "the IRS's appeal is not ripe for review," reasoning that, because the IRS had neither attempted to disclose any documents nor instituted a criminal investigation, "any detrimental impact the district court's order may have on the IRS's investigation is, at this time, purely speculative." 117 S. Ct. at 464-465 (quoting *United States* v. *Jose*, 71 F.3d 1484, 1485 (9th Cir. 1995)).

This Court reversed, holding that the IRS could "gain access to appeal from the District Court's final decision to the extent that it disfavored the Service." 117 S. Ct. at 465. The Court explained that the district court's final order "is a decision dispositively granting in part and denying in part the remedy requested. The IRS prevailed to the extent that the District Court enforced the summons. The Service did not prevail to the extent that the District Court imposed a condition." *Ibid.* In holding that the

district court's order was a final, appealable order, the Court also stated that "appellate jurisdiction over final decisions does not turn on which side prevailed in the District Court," and that "[f]inality, not ripeness, is the doctrine governing appeals from District Court to Circuit Court." *Ibid.*

Although the Court's decision in *Jose* framed the issues in that case in terms of ripeness, because that was the doctrine "interject[ed]" by the court of appeals, 117 S. Ct. at 465, the Court's decision necessarily assumed that the IRS had standing to appeal because the agency was aggrieved by the district court's order. The Court in *Jose* observed that it previously had granted a writ of certiorari when the government similarly had been "[a]ggrieved" by a conditional enforcement order upheld by the Ninth Circuit. *Ibid.* Noting that the Court had affirmed the court of appeals' decision in that case by an equally divided Court, *ibid.* (citing *United States* v. *Zolin*, 491 U.S. 554, 561 (1989)), the Court explained that "[w]e hardly would have done so had we considered the matter unfit for review," *ibid.*

This Court's decision in *Jose* therefore strongly supports the proposition that a party may appeal a district court's decision that "dispositively * * * den[ies] in part the remedy requested." 117 S. Ct. at 465. Indeed, lower courts expressly have recognized the principle that an otherwise prevailing party may appeal any portion of a court's final decision on which she did not prevail. See, *e.g.*, *United States* v. *McAndrews*, 12 F.3d 273, 278 (1st Cir. 1993) (defendant could appeal adequacy of sentence reduction under Federal Rule of Criminal Procedure 35(b); court reasoned that "[a] prevailing party dissatisfied with the quantum of relief obtained—say,

a personal injury plaintiff who receives a favorable liability finding but a paltry damage award — ordinarily can seek appellate review"); *Disher* v. *Information Resources, Inc.* 873 F.2d 136, 138 (7th Cir. 1989) (a "dismissal without prejudice, by subjecting the defendant to the risk * * * of further litigation, is not entirely in the defendant's favor any more than a judgment for $1 million would be entirely in favor of a plaintiff who believed he was entitled to a judgment for $1,236,000")[11]; *LaBuhn* v. *Bulkmatic Transport Co.*, 865 F.2d 119, 121-122 (7th Cir. 1988) ("[o]bviously you can't appeal from a decision that is entirely in your favor. * * * But you can appeal from the parts of a generally favorable order that are unfavorable to you").[12]

2. Consistent with the above principles, petitioner is aggrieved by, and therefore may appeal, the district

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[11] But cf. *Parr* v. *United States*, 351 U.S. 513 (1956) (order granting government's motion to dismiss indictment without prejudice not appealable by defendant).

[12] Courts of appeals routinely entertain appeals by parties who prevailed on the merits but were nonetheless aggrieved because they did not obtain all of the relief they requested. See, *e.g.*, *Gargoyles, Inc.* v. *United States*, 113 F.3d 1572 (Fed. Cir. 1997) (prevailing party recovered reasonable royalty but was denied lost profits); *Castle* v. *Rubin*, 78 F.3d 654 (D.C. Cir. 1996) (per curiam) (prevailing party awarded partial back pay but denied reinstatement and front pay); *La Plante* v. *American Honda Motor Co.*, 27 F.3d 731 (1st Cir. 1994) (prevailing party awarded compensatory damages but not punitive damages); *Graziano* v. *Harrison*, 950 F.2d 107 (3d Cir. 1991) (prevailing party awarded damages but denied attorney's fees); *Ragen Corp.* v. *Kearney & Trecker Corp.*, 912 F.2d 619 (3d Cir. 1990) (prevailing party denied consequential damages); *Carrigan* v. *Exxon Co.*, 877 F.2d 1237 (5th Cir. 1989) (prevailing party awarded damages but not injunctive relief).

court's judgment under the fourth sentence of 42 U.S.C. 405(g). The district court "ordered that this case be remanded to the [Commissioner] for further proceedings" consistent with the district court's opinion. Pet. App. 25; see also *id.* at 14 (final judgment remanding case). Petitioner, however, sought outright reversal of the Commissioner's denial of disability benefits and an affirmative determination that she was entitled to an immediate award of benefits; only as alternative and lesser relief did she seek a remand for further administrative proceedings on the merits of her claim. C.A. E.R. 242. Indeed, the fourth sentence of Section 405(g) expressly authorizes a district court to enter "a judgment * * * reversing the decision of the Commissioner for Social Security with *or without* remanding the cause for a rehearing." 42 U.S.C. 405(g) (emphasis added).[13] Al-

[13] Before the court of appeals' decision in this case, the Ninth Circuit had entertained appeals brought by claimants challenging a sentence-four remand order on the ground that the district court should have determined that the claimant was entitled to an immediate award of benefits without further rehearing before the agency. See *Springer* v. *Chater*, 91 F.3d 155 (1996) (unpublished disposition) (affirming district court's order of remand); *Waggoner* v. *Chater*, 81 F.3d 171 (1996) (unpublished disposition) (modifying district court's order of remand); *Gifford* v. *Chater*, 77 F.3d 488 (1996) (unpublished disposition) (holding that claimant "is entitled to an immediate finding of disability and award of benefits" when ALJ failed to provide reasons for rejecting credibility of claimant's pain testimony and reports of examining physician); *Atkins* v. *Chater*, 70 F.3d 529 (1995) (affirming district court's order of remand); *Weaver* v. *Chater*, 67 F.3d 310 (1995) (unpublished disposition) (reversing and remanding for an award of benefits based on opinions of treating physician); *Joyal* v. *Department of Health & Human Servs.*, 37 F.3d 1505 (1994) (unpublished disposition) (reversing district court's order for further proceedings and remanding for an award of benefits); *Buzzard* v. *Shalala*, 36 F.3d 1102 (1994) (unpublished disposition) (affirming district court's order of remand).

though petitioner clearly "prevailed" in the sense that she obtained a reversal and remand for further administrative proceedings on the merits, she did not prevail to the extent that she requested a reversal with an outright award of benefits.[14] Petitioner plainly is aggrieved by the district court's judgment "dispositively * * * denying in part the remedy requested," *Jose*, 117 S. Ct. at 465, and therefore may seek appellate review to alter the terms of that judgment.

Furthermore, any sentence-four judgment that includes a remand necessarily comprises the court's disposition of legal disputes raised by the parties, and that judgment will affect the character of the further proceedings on the merits on remand. See *FPC* v. *Pacific Power & Light Co.*, 307 U.S. 156, 160 (1939)

[14] Under this Court's decision in *Schaefer*, 509 U.S. at 300-302, petitioner is a "prevailing party" for purposes of an award of attorney's fees under EAJA, 28 U.S.C. 2412(d)(1)(A). As the court of appeals recognized, however, "the status of prevailing party for purposes of attorney's fees * * * does not automatically equate with status as prevailing party for purposes of appeal." Pet. App. 11. For the latter purpose, the issue is not whether the party in some fashion "prevailed" in the district court, but whether she is "aggrieved" by that court's judgment. For example, if the district court had resolved every legal issue in this case on the merits in petitioner's favor but had determined that petitioner was entitled to some but not all of the benefits she had sought, petitioner would qualify as a "prevailing party" for purposes of attorney's fees, but she also would have a right to appeal the judgment to seek additional benefits. See note 12, *supra*; cf. 20 C.F.R. 404.902(c) (Commissioner's determination of amount of disability benefits is seperately subject to administrative and judicial review).

("The court has power to pass judgment upon challenged principles of law insofar as they are relevant to the disposition made by the Commission. [A] judgment rendered will be a final and indisputable basis of action between the commission and the defendant.") (internal quotation marks omitted); see also *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145 (1940) ("On review the court may * * * correct errors of law and on remand the Commission is bound to act upon the correction.").

Here, the district court expressly remanded the cause for further proceedings before the agency "in accordance with" the court's decision. Pet. App. 25. That decision rejected petitioner's contentions that the ALJ erred (1) in rejecting the medical opinion of petitioner's treating physician regarding the number of hours she could work each day (*id.* at 22-23); (2) in finding that petitioner's allegations of pain were not credible (*id.* at 23-24); and (3) in posing questions to a vocational expert about petitioner's ability to work with specified medical impairments without incorporating into the questions the report of petitioner's treating physician regarding the extent of those impairments (*id.* at 24). Petitioner will be adversely affected by those rulings in the course of further proceedings, because the ALJ who rehears the cause will be free to do so "in accordance with" the court's opinion, without revisiting the treating physician, pain, and vocational expert issues. *Id.* at 25.

A treating physician's medical opinion and the subjective testimony of the claimant regarding pain are often critical factors in determining whether a claimant is disabled and entitled to benefits. See 42 U.S.C. 423(d)(5); 20 C.F.R. 404.1527 (standards for evaluating opinion of treating physician); 20 C.F.R. 404.1529 (standards for evaluating claimant's symptoms, including pain); see also note 3, *supra*. Moreover, courts have held that the Commissioner's decision to reject either the medical opinion of the claimant's treating physician or the testimony of the claimant herself must be supported by substantial evidence. See, *e.g.*, *Chavez* v. *Department of Health & Human Servs.*, 103 F.3d 849, 853 (9th Cir. 1996); *Bean* v. *Chater*, 77 F.3d 1210, 1213-1214 (10th Cir. 1995); *Barrett* v. *Shalala*, 38 F.3d 1019, 1023-1024 (8th Cir. 1994). Thus, a resolution in petitioner's favor by the court of appeals on one or more of petitioner's contentions of error by the ALJ could significantly affect whether the ALJ awards petitioner benefits on remand.[15]

To be sure, as the court of appeals observed (Pet. App. 10), the district court's remand might ultimately "result in an award of all of the benefits claimed." The district court's remand order, however, deprives petitioner of the immediate and certain benefits to which she would now be entitled if the district court had granted her the outright reversal she had re-

[15] It was petitioner's contention in the court of appeals that, but for the district court's adverse rulings, petitioner would be entitled to an immediate award of benefits without further consideration by the agency. See Pet. C.A. Br. 21-31. The Commissioner disputes that contention, on the grounds that the ALJ's rulings were based on substantial evidence (see Gov't C.A. Br. 14-22) and that, if the court of appeals found to the contrary, the appropriate relief would be a remand to the agency to reweigh the evidence in light of the court of appeals' decision. See *infra*, pp. 28-29. Regardless of the ultimate outcome of that dispute, however, petitioner at least has standing to argue on appeal both that she is entitled to an immediate award of benefits or, in the alternative, that she is entitled to a remand on more favorable terms than those provided by the district court.

quested. The fact that she might receive benefits later, after further proceedings on remand, does not detract from the fact that she will not receive benefits now under the district court's judgment. Thus, under principles generally applicable to "other civil actions," 42 U.S.C. 405(g), petitioner is sufficiently aggrieved by the district court's disposition of this case that she is entitled to appellate review of the judgment. See *Jose*, 117 S. Ct. at 465 ("Nor is the IRS required to provide notice of its intention to transfer documents internally, for this is the very condition the IRS seeks to attack on appeal.").

C. The Practical Consequences Of A Claimant's Appeal Of A District Court's Final Judgment Remanding To The Commissioner Are Limited And Do Not Furnish A Basis For An Exception To Appealability

1. The Ninth Circuit concluded that it "ought not to entertain [petitioner's] present appeal" because "[r]eview at this point would be subject to all of the disadvantages of piecemeal appeals; unnecessary decisions waste judicial effort, interfere unduly with the district courts or administrative agencies, and require [the court of appeals] to adjudicate on less than a full record." Pet. App. 11. Although the court of appeals' concerns cannot be rejected out of hand, we believe that they do not furnish a basis for carving out such appeals by Social Security claimants from the usual rule under 28 U.S.C. 1291 that a party aggrieved by the final judgment of a district court is entitled to take an appeal.

In the first place, appeals of sentence-four remand orders by claimants are likely to be rare, because a district court's judgment holding that the Commissioner's decision is legally erroneous and remanding

the matter to the Commissioner for further proceedings represents a substantial, albeit partial, victory for a claimant.[16] The further administrative proceedings ordered by the district court may then offer a claimant substantial strategic or practical advantages. For example, the claimant is likely on remand to have an opportunity to present to the agency additional medical evidence or testimony in support of her application for benefits. Additionally, a claimant who is awarded and accepts a sentence-four remand may immediately seek attorney's fees and expenses under EAJA, see *Schaefer*, 509 U.S. at 303, while an appeal by the claimant at that point could delay the receipt of fees and expenses until after appellate review is completed.[17]

Moreover, resolution of the ultimate issue of the claimant's entitlement to benefits may occur more quickly through the administrative proceedings.

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[16] We are aware of only two other reported lower court decisions in which a claimant has appealed a sentence-four remand order. *Nguyen* v. *Shalala*, 43 F.3d 1400, 1402 n.2 (10th Cir. 1994); *Atkins* v. *Chater*, *supra* (entertaining appeal without discussion of jurisdiction). It is our understanding that petitioner's counsel was involved in *Atkins*, as well as all of the unpublished decisions cited in note 13, *supra*.

[17] For several reasons, a district court might wish to defer its ruling on a fee application pending the outcome of appellate proceedings. The claimant may lose her status as a prevailing party on appeal, see *Nguyen*, 43 F.3d at 1403-1404, or the court of appeals' decision may bear on whether the government's position was substantially justified under 28 U.S.C. 2412(d). Moreover, because the claimant may be entitled to additional fees incurred on appeal, see *Jean* v. *Nelson*, 863 F.2d 759, 770 (11th Cir. 1988), aff'd on other grounds, 496 U.S. 154 (1990), the district court may want to postpone its ruling until after the claimant has submitted all potential fee applications.

Sentence-four remand orders are directly sent to SSA's Appeals Council for immediate resolution or assignment to an ALJ. 20 C.F.R. 404.983. We have been informed by SSA that the ALJ issues a decision, on average, within a year. More significantly, claimants historically have very good prospects of fully prevailing on remand. Thus, we have been informed by SSA that, following additional development of the record on remand, benefits are awarded in approximately 60% of Social Security cases remanded to the Commissioner.

The frequency with which claimants may be expected to appeal district court decisions is reduced further by several additional factors. For instance, the claimant might risk a cross-appeal by the Commissioner that could eviscerate the claimant's partial victory of remand ordered by the district court. And a claimant likely will face an uphill battle on appeal, since the Commissioner and the district court have each concluded that the existing administrative record was insufficient to warrant an immediate award of benefits.

Finally, even if the court of appeals were to find that the district court's legal rulings adverse to the claimant were erroneous, the court of appeals might nevertheless conclude that it should order a remand to the agency for further administrative proceedings on the merits, rather than reverse the Commissioner's decision outright and direct an award of benefits. See, *e.g.*, *Ingram* v. *Chater*, 107 F.3d 598, 605 (8th Cir. 1997); see also *Ragland* v. *Shalala*, 992 F.2d 1056, 1060 (10th Cir. 1993) (decision whether to remand for additional evidence or simply to award benefits is within court's discretion); accord *Stone* v. *Heckler*, 761 F.2d 530, 533 (9th Cir. 1985); *Podedworny* v. *Harris*, 745 F.2d 210, 221 (3d Cir. 1984). Indeed, courts of appeals order immediate awards of benefits only in limited circumstances. See, *e.g.*, *Taylor* v. *Chater*, 118 F.3d 1274, 1279 (8th Cir. 1997) ("record overwhelmingly supports a finding of disability"); *Faucher* v. *Secretary of Health & Human Servs.*, 17 F.3d 171, 176 (6th Cir. 1994) ("all essential factual issues have been resolved"); *Davis* v. *Shalala*, 985 F.2d 528, 534 (11th Cir. 1993) ("cumulative effect of the evidence establishes disability without any doubt"); *Rodriguez* v. *Bowen*, 876 F.2d 759, 763 (9th Cir. 1989) ("no useful purpose would be served by further administrative proceedings" or "remand would only delay the receipt of benefits"); *Gilliland* v. *Heckler*, 786 F.2d 178, 184 (3d Cir. 1986) ("the administrative record * * * has been fully developed and * * * substantial evidence * * * as a whole indicates that the Claimant is disabled and entitled to benefits"); *Parker* v. *Harris*, 626 F.2d 225, 235 (2d Cir. 1980) ("record provides persuasive proof of disability and a remand for further evidentiary proceedings would serve no purpose").

For the foregoing reasons, it is far more likely that claimants generally will accept the remand order and seek to adduce additional evidence and urge a different weighing of the record in the administrative proceedings. Thus, the practical consequences of appellate jurisdiction over claimant appeals should be limited.

2. Nor in our view should the availability of appellate review prompt claimants to appeal adverse findings in the district court's decision out of fear that they will be precluded from contesting them in a subsequent proceeding under Section 405(g). Although equitable principles of issue preclusion normally apply when appellate "review is available but

is not sought" (Restatement (Second) of Judgments § 28 comment a (1982)), those principles should not, in our view, be applied to force claimants to take appeals they otherwise would not take simply to preserve their challenges to certain aspects of the district court's decision, when existing practical and policy considerations already counsel claimants not to seek an immediate appeal. Indeed, the rigid imposition of principles of issue preclusion would frustrate their purpose to guard against unnecessary litigation.

a. In holding that it "ought not to entertain [the] present appeal," Pet. App. 11, the court of appeals rejected petitioner's contention that she would be barred by principles of issue preclusion from contesting the district court's adverse rulings against her in a subsequent judicial proceeding following the administrative proceedings on remand. The court explained that "it is inappropriate to hold [petitioner] to rulings that she was precluded from appealing." *Id.* at 12. That general proposition naturally flows from the court of appeals' refusal to consider petitioner's appeal. See Restatement (Second) of Judgments § 28(1) (1982) (issue preclusion does not apply when "[t]he party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action"); Wright, Miller & Cooper, *supra*, § 3902, at 84 ("if appeal is denied, preclusion also should be denied").

The court of appeals' conclusion that petitioner's dilemma is "false," Pet. App. 12, however, does not resolve the antecedent question whether petitioner is aggrieved by the district court's judgment, any more than did petitioner's original contention that she must be permitted to appeal the district court's adverse rulings to avoid the effects of preclusion. See

EEOC v. *Chicago Club*, 86 F.3d 1423, 1431 n.2 (7th Cir. 1996) (noting "potential circularity" of a requirement that a decision must bar a party from readjudication in order for that party to be aggrieved by the decision); see also *Concerned Citizens of Cohocton Valley, Inc.* v. *New York Dep't of Envt'l Conserv.*, 127 F.3d 201, 205 (2d Cir. 1997); *LaBuhn*, 865 F.2d at 122. Here, petitioner is entitled to appeal the court's remand order, not because of putative preclusive effects, but because petitioner challenges a final judgment that did not grant her all the relief she requested.

The court of appeals also erred in concluding that the district court's rulings that are adverse to petitioner are "unnecessary to the remand" and thus not "essential to the judgment." Pet. App. 12-13. The court relied (*id.* at 13) on comment h to Section 27 of the Restatement (Second) of Judgments, which explains that determinations not essential to the judgment "have the characteristics of dicta, and may not ordinarily be the subject of an appeal by the party against whom they were made."[18] The district court's

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[18] The court of appeals recited (Pet. App. 13) an illustration to Section 27, which states that an alleged trademark infringer is not precluded from defending an infringement action on invalidity grounds even though in a prior proceeding a court found a trademark valid because that it was not infringed. Restatement (Second) of Judgments § 27 comment h, illust. 14 (1982). The facts of the prior proceeding so described, however, are virtually identical to the facts in *Electrical Fittings*, in which the Court *permitted* an appeal urging the court of appeals to remove the finding of validity from the district court's decree. 307 U.S. at 242-243; see also *Roper*, 445 U.S. at 335-336 n.7 (discussing *Electrical Fittings* and explaining that "petitioners could take the appeal to correct this error because there had been an adverse decision on a litigated issue, they

rulings adverse to petitioner, however, are not dicta but "stand[] as an adjudication of one of the issues litigated." *Roper*, 445 U.S. at 336; see also *Electrical Fittings*, 307 U.S. at 242. As discussed above, petitioner contends on appeal that, had the district court ruled to the contrary on one or more of the issues that she sought to raise on appeal, the administrative record in this case warranted a judgment of reversal without a remand for further administrative proceedings on the merits. See Pet. C.A. Br. 18, 21, 27-28, and 35. Because the judgment is not fully favorable to petitioner (in light of the remand for further proceedings on the merits), petitioner is entitled to challenge those rulings that, in her submission, underlie the unfavorable portion of the judgment. Compare *California* v. *Rooney*, 483 U.S. at 311.

b. Despite the foregoing errors in the court of appeals' analysis, we nonetheless believe that the availability of the option to appeal should not preclude claimants who choose not to exercise that option from challenging the district court's findings in a subsequent judicial proceeding. Issue preclusion, or collateral estoppel, is "an equitable doctrine resting within the [courts'] broad discretion." *JM Muniz, Inc.* v. *Mercantile Texas Credit Corp.*, 833 F.2d 541, 543 (5th Cir. 1987); cf. *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 331 (1979) (courts have "broad discretion" to apply offensive collateral estoppel). As a judge-made doctrine, it is designed to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing

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continued to assert an interest in the outcome of that issue, and for policy reasons this Court considered the procedural question of sufficient importance to allow an appeal").

inconsistent decisions, encourage reliance on adjudication." *United States* v. *Mendoza*, 464 U.S. 154, 158 (1984) (quoting *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980)); see also *Parklane Hosiery Co.*, 439 U.S. at 326 (collateral estoppel "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and promot[es] judicial economy by preventing needless litigation").

Concerns of judicial efficiency and the settled expectations of litigants, however, are not implicated when a claimant forgoes immediate appellate review of a sentence-four judgment containing a remand order, and instead follows the district court's order and seeks redress from the agency. If the claimant is unsuccessful on remand, and she files a subsequent action under Section 405(g) seeking judicial review of the Commissioner's new decision, no sufficient purpose would be served by altogether barring the claimant from raising issues resolved against her in the first district court action.[19] Although the second round of judicial review would be a new civil action in court, there is but one underlying administrative proceeding before the Commissioner on but one application for benefits. In those circumstances, the second round of judicial review neither presents a risk of inconsistent judicial decisions nor burdens the parties or the courts with vexatious litigation.[20]

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[19] The district court, in the second round of judicial review, may apply law-of-the-case type principles. See Pet. App. 12; *Agostini* v. *Felton*, 117 S. Ct. 1997, 2017 (1997).

[20] A system in which claimants are permitted to forgo an immediate appeal without fear of preclusive effects also is consistent with a recognized exception to issue preclusion for an issue of law when "a new determination is warranted in order * * * to avoid inequitable administration of the laws." Re-

Additionally, to the extent that a rule of issue preclusion would encourage litigants to seek immediate judicial review of sentence-four remand orders, the application of such a rule would promote unnecessary appellate litigation. As previously discussed (pp. 26-29, *supra*), most remanded claimants will forgo an appeal in favor of further administrative proceedings, because that is the fastest and most effective path to obtaining Social Security benefits. By contrast, a fixed rule of preclusion would create undesirable incentives to avoid administrative proceedings on remand, even though such proceedings can provide the most efficient means of resolving a given dispute. For those reasons—and in light of the special attributes of judicial review of agency action, in which the agency has primary jurisdiction and the matter ordinarily should be returned to the agency if the court finds a flaw in its decision, see *FPC* v. *Idaho Power Co.*, 344 U.S. 17, 20-21 (1952); *Pottsville Broadcasting Co.*, 309 U.S. at 141—the relevant policy considerations do not, on balance, support application of issue preclusion. See generally *Parklane Hosiery Co.*, 439 U.S. at 326-333 (discussing centrality of policy concerns in determining scope of collateral estoppel doctrine); *Mendoza*, 464 U.S. at 159-162 (discussing policy concerns counseling against applying non-mutual collateral estoppel to the government).

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statement (Second) of Judgments § 28(2) (1982). It would be unfair to require claimants to seek immediate appellate review of sentence-four remand orders when the most expeditious avenue of obtaining benefits may be pursuing an administrative proceeding.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
FRANK W. HUNGER
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
LISA SCHIAVO BLATT
Assistant to the Solicitor General
WILLIAM KANTER
MARY K. DOYLE
Attorneys

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APPENDIX

STATUTORY PROVISIONS INVOLVED

1. Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), provides:[1]

> [1] Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. [2] Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business, within any such judicial district, in the United States District Court for the District of Columbia. [3] As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. [4] The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. [5] The findings of the

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[1] Because of the length of 42 U.S.C. 405(g), we have inserted numbers in brackets to identify its separate sentences.

Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. [6] The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. [7] Such additional or modified findings of fact and

decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. [8] The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. [9] Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

2. Section 1291 of Title 28 of the United States Code provides:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.